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Attorneys for Federal Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

THE ASSINIBOINE AND SIOUX
TRIBES OF THE FORT PECK INDIAN
RESERVATION,

Plaintiff,

v.

THE U.S. DEPARTMENT OF THE
INTERIOR, *et al.*,

Defendants,

and

TRANSCANADA KEYSTONE
PIPELINE, LP, *et al.*,

Defendant-Intervenors.

CV 20-44-BMM

**JOINT MOTION FOR A
PROTECTIVE ORDER**

The parties in this case jointly move the Court to enter the attached proposed Protective Order. The reasons for this motion are as follows:

1. The U.S. Bureau of Land Management and the U.S. Army Corps of Engineers will file the certified indices to the administrative records in this case on December 18, 2020.

2. The purpose of the Protective Order is to protect from public disclosure confidential business information, the release of which would cause competitive harm to TransCanada Keystone Pipeline and/or TransCanada Corporation, and information that is or may be protected from public disclosure by federal laws, including exemption 3 (information prohibited from disclosure by another statute), 5 U.S.C. § 552(b)(3), exemption 4 (confidential business information), 5 U.S.C. § 552(b)(4), and exemption 7 (law enforcement records that may endanger life or physical safety), 5 U.S.C. 552(b)(7), of the Freedom of Information Act (“FOIA”). This information includes Geographic Information System (GIS) files, Shapefiles, LiDAR, UTM, and/or any similar data, for the Keystone XL pipeline project, including the pipeline route as well as the locations of its ancillary facilities (Confidential Records). The Confidential Records may also include documents containing sensitive information protected by the National Historic Preservation Act, 54 U.S.C. § 307103, Archaeological Resources Protection Act, 16 U.S.C. § 470hh, or the Pipeline and Hazardous Materials Safety

Administration regulations, 49 C.F.R. Part 190, to the extent that such documents are included in, or added to, the record and are necessary for the litigation of Plaintiff's claims.

3. The attached proposed Protective Order contains mutually agreed upon terms and conditions relating to the use, for purposes of this litigation, of Confidential Records in the administrative records. The Protective Order provides that Federal Defendants will disclose the Confidential Records to Plaintiff, and Plaintiff will not share the Confidential Records publicly or use them for any purpose other than this action. If any party relies on the Confidential Records in a public filing, it will file any portion of the brief or pleading describing or disclosing the Confidential Records under seal, pursuant to Local Rule 5.1. Plaintiff may challenge the designation of any records as confidential by a motion to this Court. In accordance with Local Rule 5.1(d)(3)(B), the parties shall file redacted versions of filings that refer to Confidential Records in the public file.

Accordingly, the parties respectfully request that the Court enter the proposed Protective Order as soon as possible. The parties have authorized Defendants to file this motion on behalf of all the parties.

DATED: December 17, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2020, a copy of the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Luther L. Hajek
LUTHER L. HAJEK
U.S. Department of Justice